

## II. General Remarks Concerning This Response

Claims 1-21 are currently pending in the present application. No claims have been amended, added, or canceled. Reconsideration of the claims is requested.

5       The Office action did not acknowledge the receipt of formal drawings, which were filed on 10/16/2000. Applicant kindly requests an acknowledgment of the filing of the formal drawings and an indication of whether or not the formal drawings are acceptable.

10       The Office action objected to the originally filed abstract based on length; the rule for limiting the abstract to 150 words or less was enacted after the filing of the present patent application. An amended abstract is included hereinabove.

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## III. Summary of Telephonic Interview

Applicant thanks Examiner Nguyen for the telephonic interview of 08/29/2003. During this interview, Applicant summarized the important differences between the applied prior art and the present invention; this response contains a formal presentation of the arguments that were briefly presented during the interview. At the time of the interview, the examiner did not agree to accept Applicant's interpretation of the prior art and reserved judgment on the merits of Applicant's arguments until the arguments were presented within this formal response.

25       However, it should be noted that it was clear to Applicant that the examiner did not understand the present invention. After explaining the present invention and the advantages of the present invention, the examiner stated an opinion that the claim language should be amended by removing or simplifying several phrases because, in the examiner's

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opinion, the claim language would be easier to understand, thereby more closely following the examiner's understanding of the present invention. In other words, the examiner was apparently expressing an opinion that the claim language was unnecessarily dense.

Applicant has declined to follow the examiner's suggestion. In fact, Applicant was perplexed by the examiner's suggestion as Applicant usually receives suggestions from other examiners to add additional elements to claims. Moreover, amending the claims as suggested would possibly allow the examiner to make final a follow-up rejection, thereby causing Applicant to lose one of the Applicant's two considerations of the claims, particularly when the original claims have not been properly interpreted and given sufficient consideration in the first Office action.

Applicant maintains that the present invention is readily understandable if sufficient attention is given to reading and understanding the specification. Applicant also maintains that the originally filed claims provide clear and sufficient language for claiming the present invention without causing unnecessary confusion or complexity. More importantly, Applicant maintains that when the present invention is properly understood, the elements of the claimed invention are able to be properly interpreted without requiring additional limitations from the specification to be read into the claims. Furthermore, Applicant maintains that when the present invention is properly understood, it should be clear that the obviousness arguments in the rejections are clearly deficient.

IV. 35 U.S.C. § 103(a)-Obviousness-Agarwal et al. in view of Yamane et al.

The Office action has rejected independent claims 1, 2, 6-9, 13-16, 20, and 21 under 35 U.S.C. § 103(a) as  
5 unpatentable over Agarwal et al., "Systems and methods for monitoring distributed applications including an interface running in an operating system kernel", U.S. Patent No. 5,958,010, filed 03/20/1997, issued 09/28/1999, in view of Yamane et al., "Web service", U.S. Patent Number 6,317,786 B1,  
10 filed 05/29/1998, issued 11/13/2001. This rejection is traversed.

All of the pending independent claims have been rejected, at least in part, over a combination of the disclosure of Agarwal et al. and Yamane et al.; each of the independent  
15 claims has one or more common elements against which the rejection applies certain portions of Agarwal et al. and Yamane et al.. However, Applicant asserts that there is at least one element of each independent claim that is not shown in Agarwal et al. and Yamane et al. nor provided by a  
20 combination of Agarwal et al. and Yamane et al., thereby causing these obviousness rejections to be deficient.

The overwhelming majority of the Office action is devoted to the rejection of independent claim 1, which addresses the first two elements of claim 1 by referencing Agarwal et al.  
25 and then addresses the third element of claim 1 by referencing Yamane et al.. The first part of the rejection of claim 1 states on page 3, paragraphs 2 and 3:

30 filtering, by the monitoring agent [30-40, Figure 1], network data from the client to the server [col 3, lines 36-43; and col 8, lines 15-18];

determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the

operational parameters of the monitoring agent [col 3, lines 21-32 and lines 48-52; col 7, lines 46-56; and col 9, lines 10-15].

- 5 The first portions of Agarwal et al. that are cited by the rejection read as follows:

10 The system further includes a monitor that has an interface for coupling into the communications stack and for monitoring the data being passed between the client and the network, and a filter module for processing the data to detect portions of that data which is representative of communications associated with that server program.--(column 3, lines 36-43).

15 In this way, the module 80 can filter from the traffic those portions that are relevant to the agent 50 and pass copies of this traffic to the agent 50.--(column 8, lines 15-18).

20 Hence, the fact that the system of Agarwal et al. discloses a monitoring agent that filters network traffic is not disputed.

However, the second portions of Agarwal et al. that are cited by the rejection read as follows:

25 By coupling into the communications stack, the agent can monitor all data being passed to any process running on the client. Optionally, the agents can be directed to monitor communications with a selected group of servers, such that all data being passed from or to these servers will be detected and stored by the agent. The agent can store all the collected data in a database. As the agents are aware of the application protocols, the systems are capable of collecting useful data for trouble-shooting, trend analysis, resource planning, security auditing, accounting and chargeback, and other applications.--(column 3, lines 21-32).

35 A user module can operate to receive information from the agent and process the information to determine the characteristic of the server program operation. The characteristic can be representative of a volume of use for the server program and response time or other characteristics. --(column 3, lines 48-52).

40 In contrast to the system monitor 70, the monitors 72-76 are to monitor events associated with distributed processes. Accordingly, the details relevant to the monitored events require information about the distributed processing operations that are occurring. A

realization of the present invention is that the monitors 72-76 can passively collect information about the distributed process by monitoring the network communications that occur during the distributed process. To this end, each monitor element can include an interface to the network communications stack to passively monitor communications between the distributed process elements.--(column 7, lines 46-56).

The module 180 includes an agent 150 and a TAP driver 163. The agent 150 includes a TAP API 157, and the TAP driver 163 includes a Tap device 161 and a TapFilter device 162. The Tap device 161 communicates with the TAP API 157 to set up monitoring parameters and to supply monitoring data.--(column 9, lines 10-15).

It should be apparent that Agarwal et al. does not disclose the second element of claim 1, i.e. "determining, by the monitoring agent, whether an outgoing transaction in the network data is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent". At most, Agarwal et al. mentions that the monitoring agent can "set up monitoring parameters".

The second part of the rejection of claim 1 specifically states that Agarwal et al. does not disclose the third element of claim 1 and then states on page 3, last paragraph, to page 4, paragraphs 2 and 3, that Yamane et al. discloses the third element; the rejection reads as follows:

in response to a positive determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, sending a request from the monitoring agent to the server to send to the monitoring agent an update of the operational parameters of the monitoring agent [col 9, lines 47-52; col 10, lines 29-67; and col 16, lines 32-40]

The portions of Yamane et al. that are cited against the third element by the rejection read as follows (emphasis added):

5           In one embodiment, the agent 106 uses a socket to  
send commands to the web server interfaces 104. The  
10           agent 106 can also send requests directly to the web  
server 102. The agent 106 can also communicate with the  
manager 110, and pass along to the manager 110  
information received from web server interface  
104.--(column 9, lines 47-52).  
          The manager 110 can send commands or requests to the  
15           agent 106 for the agent 106 itself or for the agent 106  
to pass onto the other components on the host 100. The  
manager 110 can add or delete a new web server 102, and  
can configure the agent 106 to act appropriately based on  
the change. The manager 110 can retrieve or change the  
20           configuration of the agent 106, or the other components  
on the host 100. The manager 110 can send a test message  
to the agent 106 if it has not received any messages for  
a predetermined time. For example, the manager 110 can  
send a short message requesting a response indicating  
that the agent 106 is operating. Often the response is  
an echo of the message. The manager 110 can request a  
25           full list of the state of the agent 106. In one  
embodiment, the manager 110 can also request a list of  
recent events. Such a list is useful if a manager 110  
that has just started is introduced to a running agent  
106, for example when a manager 110 has inadvertently  
30           failed and been restarted, or when communication has been  
disrupted. In another embodiment, the agent 106 will  
automatically periodically send a list of events to the  
manager 110. If a connection between the agent 106 and  
manager 110 inadvertently fails, the agent 106 will  
35           automatically save the events, and when communication is  
resumed, send all the events that have been saved to the  
manager 110.  
          The agent 106 sends web page request information to  
the manager 110. In one embodiment, data packets  
40           containing web page request information are sent to the  
manager 110 in groups of 100 requests. In another  
embodiment, data is sent to the manager 110 whenever a  
buffer containing the data, for example a 4k or 8k  
buffer, is full. In another embodiment, data is sent to  
45           the manager 110 at a periodic time interval, for example,  
every 30 seconds. In another embodiment, the data is

5 sent whenever a buffer containing the data is full or at  
a periodic time interval, whichever comes first. Various  
information can be included with regard to each request.  
The information provided by the web server interface 104  
about each web page request can be passed on to the  
manager 110. This information can include the  
information listed in Table 3. The manager 110 can  
instruct the agent 106, and the agent will instruct the  
web server interface 102, to send some or all of the  
10 information included in Table 3.

15 The agent 106 can provide to the manager 110 certain  
information about each web page request that was passed  
to it by a web server interface 104. For example, the  
agent 106 can provide information about the time; in  
microseconds, between the time the request was first  
received, and the time the response is completed. The  
agent 106 can also pass information that it has  
generated. For example, the agent 106 can indicate the  
number of requests in the queue at the time the request  
20 is responded to. The agent 106 can indicate whether the  
web server 102 responded appropriately to a test web page  
request. If the agent 106 sent a test web page request  
that requires use of database and other processing to  
serve the web pages, the indication of appropriate  
25 response to the test web page indicates that the database  
and other processing is functional.--(column 10, lines  
29-67).

30 The manager 110 can stop and restart the agents 106.  
The manager 110 can inform components, such as the  
interceptor 120 and the agents 106 about changes in the  
configuration of the system. The manager 110 receives  
notification of events from the interceptor 120 and the  
agents 106, and can take automatic action, or can log the  
event, and can inform the user by signalling an alert to  
35 a console 116. In one embodiment, the manager 110 can  
also signal an alert by paging or otherwise communicating  
with a system operator.--(column 16, lines 32-40).

40 It should be apparent that Yamane et al. does not  
disclose the third element of claim 1:

45 in response to a positive determination that the outgoing  
transaction is addressed such that an application on the  
server receives the outgoing transaction as a request to  
change the operational parameters of the monitoring  
agent, sending a request from the monitoring agent to the  
server to send to the monitoring agent an update of the  
operational parameters of the monitoring agent.

At most, Yamane et al. mentions that the monitoring agent can send requests to a server and communicate with the agent manager, and the agent manager can send commands to the agents and can configure the agents.

5       The motivational statement in the rejection is completely generic with respect to network traffic monitoring tools. The rejection states: "It would have been obvious to a person skilled in the art at the time the invention was made to combine the teaching of Agarwal and Yamane because Yamane's  
10       teaching would provide a better analysis tool to manage the overall system". As should be apparent, the motivational statement does not link any particular characteristic from the teachings of Yamane et al. into the teachings of Agarwal et al.; there is no argument as to why someone would particularly  
15       look to the teachings of Yamane et al. for something lacking in the teachings of Agarwal et al., and there is no argument as to how an element from the system of Yamane et al. could be integrated into the system of Agarwal et al..

Applicant admits that both Agarwal et al. and Yamane et al.  
20       disclose distributed monitoring agents. However, these types of systems were admitted as prior art and were distinguished in the present application. Moreover, neither Agarwal et al. nor Yamane et al. disclose the operation of sending a request from a monitoring agent to a server for  
25       operational parameters for the monitoring agent, which is specifically recited in method claim 1 as happening when the agent detects an outgoing transaction to the server to change its operational parameters, or more generally in method claim 6, when the agent detects an outgoing transaction to the  
30       server.

Apparently, the Office action points to column 9 in Agarwal et al. as specifically disclosing a transaction



concerning operational parameters: "The Tap device 161 communicates with the TAP API 157 to set up monitoring parameters and to supply monitoring data." These elements in Agarwal et al. reside within the client of the system of Agarwal et al.. Applicant argues that these steps are analogous in the present invention to the monitoring agent 220 retrieving its operational parameters from configuration file 222. The operational parameters are stored in the configuration file after they are received from the server, e.g., claim 2. However, the independent claims of the present invention are directed to a specific process for obtaining or updating those operational parameters from a management server to a distributed monitoring agent.

The Office action also points to column 10 and column 16 of Yamane et al. as disclosing the exchange of configuration information between a manager and an agent. However, Yamane et al. does not disclose the third element of claim 1 as asserted in the rejection; at most, Yamane et al. discloses what Applicant already admitted as prior art in the background section of the specification of the present patent application. In contrast, the present invention is directed to a specific process for the exchange of configuration information between a management server and the distributed monitoring agents; this exchange is triggered by a certain class of events that are detected by a monitoring agent, which is not shown in either Agarwal et al. nor Yamane et al. nor in a combination of the disclosure of these references.

Dependent claim 2 recites further limitations, i.e. that a monitoring agent receives and stores operational parameters. Since claim 2 is dependent from independent claim 1, claim 2 incorporates the features of claim 1. Applicant asserts that the references are deficient with respect to dependent claim 2

for the same reasons that were argued above with respect to independent claim 1.

Independent claims 6, 8, 13, 15, and 20 are similar to independent claim 1; these other independent claims were  
5 addressed by the Office action as merely being similar to independent claim 1. Hence, Applicant asserts that the references are deficient with respect to independent claims 6, 8, 13, 15, and 20 and their dependent claims for the same reasons that were argued above with respect to independent  
10 claim 1.

Dependent claim 7 recites further limitations, i.e. that a monitoring agent may monitor network traffic for particular IP addresses. Since claim 7 is dependent from independent claim 6, claim 7 incorporates the features of claim 6.  
15 Applicant asserts that the references are deficient with respect to dependent claim 7 for the same reasons that were argued above with respect to independent claim 6.

Examiner bears the burden of establishing a prima facie  
20 case of obviousness

The examiner bears the burden of establishing a prima facie case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Only when a  
25 prima facie case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office  
30 does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of a patent.

*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985). In response to an assertion of obviousness by the Patent Office, the applicant  
5 may attack the Patent Office's *prima facie* determination as improperly made out, present objective evidence tending to support a conclusion of nonobviousness, or both. *In re Fritch*, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).

Agarwal et al. clearly fails to show a feature of the  
10 present invention as currently claimed and as asserted by the Office action, thereby rendering Agarwal et al. incapable of being used as a primary reference as argued by the current rejection. In addition, Yamane et al. clearly fails to show a feature of the present invention as currently claimed and as  
15 asserted by the Office action, thereby rendering Yamane et al. incapable of being used as a secondary reference as argued by the current rejection. Moreover, the combination of Yamane et al. and Yamane et al. fail to show the claimed features. As  
20 should be recognized, because both the primary and secondary references in the rejection fail to disclose the claimed features against which the references were applied, and because the references fail to be combinable to produce this feature, the rejection fails to fulfill the requirements of a proper obviousness argument.

25 With respect to independent claims 1, 6, 8, 13, 15, and 20, Applicant respectfully submits that the applied references cannot be combined nor modified to produce the claimed invention. Hence, a rejection of the independent claims cannot be based upon the cited prior art to establish a *prima*  
30 *facie* case of obviousness. Therefore, a rejection of the independent claims under 35 U.S.C. § 103(a) has been shown to be insupportable in view of the cited prior art, and the

independent claims are patentable over the applied references. Applicant respectfully requests the withdrawal of the rejection of the independent claims. Applicant further argues that all of the pending claims, including the dependent claims which comprise the elements of their independent claims by inclusion, are distinguishable over Agarwal et al. in view of Yamane et al. for these reasons, and Applicant kindly requests the withdrawal of the rejection of all claims.

10 V. 35 U.S.C. § 103(a)-Obviousness-Agarwal et al. in view of Yamane et al. and further in view of Frailong et al.

The Office action has rejected dependent claims 3-5, 10-12, and 17-19 under 35 U.S.C. § 103(a) as unpatentable over Agarwal et al. in view of Yamane et al. and further in view of 15 Frailong et al., "Remote reconfiguration of a secure network interface", U.S. Patent Number 6,496,858 B1, filed 11/05/1999, issued 12/17/2002. This rejection is traversed.

Dependent claims 3-5 recite additional elements with respect to the outgoing transactions containing a URI (Uniform Resource Identifier) or a URL (Uniform Resource Locator) in an HTTP (HyperText Transport Protocol) request or, in the case of dependent claim 5, that "the request for an update of the operational parameters of the monitoring agent is addressed with a URI ...". It is not disputed that Frailong et al. 25 discloses the use of URLs. However, Frailong et al. does not disclose an element such as a determination that the outgoing transaction is addressed such that an application on the server receives the outgoing transaction as a request to change the operational parameters of the monitoring agent, as 30 recited in the second element of claim 1. Moreover, Frailong et al. does not disclose a step of sending a request from the monitoring agent to the server to send to the monitoring agent

an update of the operational parameters of the monitoring agent, as recited in the third element of claim 1. Thus, the combination of the teachings of Frailong et al. into the teachings of Agarwal et al. and Yamane et al. fails to reach  
5 the claimed invention, and the present invention is patentable over the applied prior art.

The Office action rejected dependent claims 10-12 and 17-19 as containing similar elements to dependent claims 3-5; claims 3-5 are method claims, whereas claims 10-12 are system  
10 claims, and claims 17-19 are computer program product claims. Thus, claims 10-12 and 17-19 are patentable for the same reasons as claims 3-5.

With respect to dependent claims 3-5, 10-12, and 17-19, Applicant respectfully submits that the applied references  
15 cannot be combined nor modified to produce the claimed invention. Hence, a rejection of these dependent claims cannot be based upon the cited prior art to establish a *prima facie* case of obviousness. Therefore, a rejection of these dependent claims under 35 U.S.C. § 103(a) has been shown to be  
20 insupportable in view of the cited prior art, and these dependent claims are patentable over the applied references. Applicant respectfully requests the withdrawal of the rejection of these dependent claims.

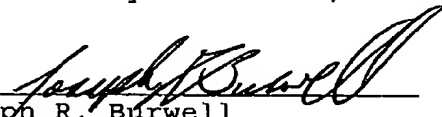
25 **VI. Conclusion**

It is respectfully urged that the present patent application is patentable, and Applicant kindly requests a Notice of Allowance.

For any other outstanding matters or issues, the examiner is urged to call or fax the below-listed telephone numbers to expedite the prosecution and examination of this application.

5     DATE: October 6, 2003

Respectfully submitted,

  
Joseph R. Burwell

Reg. No. 44,468

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ATTORNEY FOR APPLICANT

Law Office of Joseph R. Burwell

P.O. Box 28022

Austin, Texas 78755

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Voice: 866-728-3688 (866-PATENT8)

Fax: 866-728-3680 (866-PATENT0)

Email: joe@burwell.biz

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